

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FILED/ACCEPTED

FEB - 6 2007

Federal Communications Commission
Office of the Secretary

In re:

Amendment of Section 73.202(b)

Table of Allotments

FM Broadcast Stations

Dalhart and Perryton, Texas

MB Dkt No. 05-144

RM-11189

**REPLY OF PERRYTON RADIO, INC. TO
RESPONSE OF RADIO DALHART**

Perryton Radio, Inc., licensee of station KEYE-FM (Perryton, Texas) hereby provides this Reply to the Response of Radio Dalhart filed January 24, 2007.

The attached declarations of Sharon Ellzey, owner of Perryton Radio, and of Rochelle Smith Lacy, Secretary-Treasurer of Spearhead Broadcasting, Inc., cast doubt on the ability and willingness of Radio Dalhart, and its sole owner George Chambers, to fulfill its reimbursement obligations to Perryton. The declaration of Ms. Lacy demonstrates that Mr. Chambers has a history of delaying or disregarding his payment obligations, that he has missed two payments in the past 12 months, and that he is currently in arrears. Ms. Ellzey's declaration casts additional doubt on Mr. Chambers' financial wherewithal and responsibility, and demonstrates that, in addition, Mr. Chambers would have a peculiar incentive to delay or disregard any obligation to Perryton Radio, and thereby to weaken and perhaps eliminate the direct competitor of one of his stations.

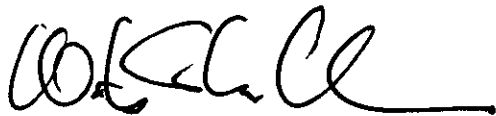
The circumstances presented by this matter are without doubt unusual, and may be unique. Here, the owner of a direct competitor of station KEYE-FM has proposed to take for his own station the frequency of KEYE (a frequency that is at the foundation of KEYE's logo

No. of Copies rec'd 074
List A B C D E

and brand). Yet the record demonstrates that the proposing party has a history of late payment and non-payment of its financial obligations. Mr. Chambers himself (in his Declaration) states that a previous radio station upgrade stretched his finances to the point that he could not remain current on his financial obligations. Moreover, the record demonstrates that the proposing party has a profound incentive to deny, or at least to delay, its payment obligations to its competitor, station KEYE.¹

For these reasons, the Commission should deny the application of Radio Dalhart, or if it grants the application, it should order Radio Dalhart to place in escrow, or advance to Perryton Radio, an amount not less than \$80,000 prior to implementing the proposed change.²

Respectfully submitted,



William S. Carnell
Counsel to Perryton Radio, Inc.
715 Hawkins Way
Alexandria, VA 22314
703-307-8482

February 6, 2007

¹ In compliance with the staff's request, this Reply is limited only to these narrow issues, and does not address other potentially relevant issues such as (1) the lack of evidence that the public interest would be served by increasing coverage to the already-crowded Amarillo suburbs while decreasing coverage to lightly-served rural areas, (2) the damage to station KEYE-FM and to its listening community that would result from the proposed change, (3) the specific ownership and control relationships among Mr. Chambers, Mr. Samples, KXIT, and KXDJ, nor (4) other background factors that suggest a competitor's improper motive for seeking the proposed frequency change.

² *Cf., e.g., Columbus, Nebraska*, 59 Rad. Reg. 2d 1184 ¶6 (1986).

DECLARATION OF SHARON ELLZEY

I, Sharon Ellzey, hereby declare as follows:

1. I am the sole owner of Perryton Radio, Inc., licensee of KEYE-FM. The purpose of this declaration is to address some of the allegations set forth in the "Response of Radio Dalhart to Further Comment of Perryton Radio, Inc."

2. As set forth in detail below, I remain concerned that Radio Dalhart lacks the ability to reimburse Perryton Radio's legitimate costs in connection with the proposed frequency change. And even if it had the wherewithal to do make the reimbursement, I am concerned that Dalhart might use the reimbursement procedures strategically, to drive Station KEYE-FM out of business.

Dalhart Will Have the Opportunity, and Incentive, to Use Reimbursement Strategically.

3. George Chambers, the owner of Radio Dalhart (itself the licensee of KXIT-FM), has every incentive to drive KEYE-FM out of business. Mr. Chambers also owns station KXDJ-FM (Spearman, Texas). Station KXDJ-FM is a direct, and fierce, competitor of station KEYE-FM.

4. Mr. Chambers recently upgraded station KXDJ-FM and moved its facilities from Spearman and into Perryton. Mr. Chambers appears to have entered into a time brokerage agreement or similar arrangement with Mr. Chris Samples: Mr. Samples has indicated that KXDJ is "his" station, and he appears to be running station KXDJ-FM from an operational and programming perspective. Mr. Samples, and KXDJ, have aggressively targeted the same demographics and advertisers to which KEYE also appeals, and the station has taken several former employees of KEYE.

5. Perryton Texas is a small town (population 8,000), and an extremely small radio market. The result of KXDJ's entry into the market – a result which was predictable long before it entered the market – has been to divide an already small and difficult market. This has caused significant losses to KEYE – and it appears likely that KXDJ is likewise suffering financially.

6. Mr. Chambers therefore has every incentive to drive out the competition. Mr. Chambers would realize a major financial gain if Station KEYE-FM goes off the air.

7. The proposed frequency change certainly presents Mr. Chambers with the opportunity to drive out KEYE. Perryton Radio will incur significant expenses. Yet it will be forced to go without revenue for the period of time that is required to re-tune its transmitter and make associated changes, and will almost certainly lose share (and advertising dollars) as some listeners do not follow KEYE to the new frequency. This will result in serious cashflow issues for Perryton Radio. Yet the Commission's rules provide that it is KEYE's arch-competitor, to whom Perryton Radio must look for reimbursement – for any resolution of its cashflow issues.

8. Given the cashflow issues that Perryton Radio will face, any delay or denial of reimbursement by Mr. Chambers would have serious financial repercussions – and a real likelihood of driving Station KEYE-FM out of business. It would be simply too easy for Mr. Chambers to act strategically in this regard, in order to drive out its competitor. It would be too easy for Mr. Chambers slow-pay Perryton – or to deny or challenge its expenses and thus ensure the additional delay of a Commission proceeding.

9. My reading of Radio Dalhart's pleadings in this matter confirms these concerns. For example, its "Response to Further Comments" states that Dalhart does not intend to pay "the consequential costs" of the frequency change, and appears to signal an intent to dispute and deny – and therefore, at minimum, to delay – such reimbursements.

Dalhart Appears to Have Shaky Finances

10. In Dalhart's "Response," and in the Declaration of George Chambers attached thereto, Mr. Chambers states that he is performing and current on his obligations to the former owner of Station KXDJ, and that he has been since June, 2005. Based on my reading of the declaration of Ms. Rochelle Lacy, which is also being submitted to the Commission, and based on my conversations with her, it appears that this is not accurate. Rather, Ms. Lacy states, Mr. Chambers has maintained a spotty payment history, and remains in arrears on those obligations.

11. In addition, Mr. Chambers' Declaration states that the reason he was unable to pay his obligations to Spearhead was "due largely to the heavy expenses I had incurred in constructing a new site for my station" The fact that Mr. Chambers was unable to remain current on his debts while he modified the facilities of station KXDJ is precisely why I am concerned that he will be unable to remain current on his reimbursement obligations while he modifies the facilities of station KXIT. Moreover, the fact that he decided to incur those "heavy expenses" to modify KXDJ, even though those expenses apparently rendered him insolvent (that is, even though those expenses made him unable to meet current obligations), makes me doubt his overall financial responsibility.

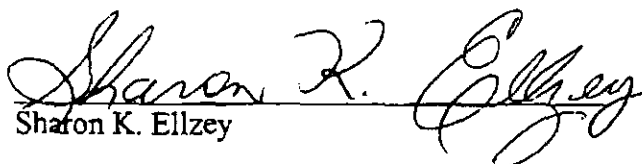
12. Finally, I note that Mr. Chambers states that he has a liquid account of approximately \$50,000 that is "earmarked" for reimbursement. As detailed in my previous declaration, Perryton Radio's costs will likely be in excess of \$50,000, and perhaps substantially above that amount. Therefore this assurance provides little comfort. Yet if this is true – if Radio Dalhart (or Mr. Chambers) has \$50,000 set aside for this purpose – there would appear to be little or no harm in formalizing the arrangement by placing that amount in escrow.

Conclusion

13. Given the totality of events and circumstances, I remain concerned that Radio Dalhart will not fulfill its reimbursement obligations. I am concerned that it may be financially unable to do so. And I am also concerned that even if it is able to do so, Radio Dalhart will at minimum dispute and delay payments, and thereby will exploit the cashflow crunch that it imposes on station KEYE.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed in Perryton, Texas on February 5, 2007.


Sharon K. Ellzey

DECLARATION OF ROCHELLE SMITH LACY

I, Rochelle Smith Lacy, hereby declare as follows:

1. I am Secretary-Treasurer of Spearhead Broadcasting, Inc.
2. The attachment is a history of payments from George Chambers on his indebtedness to Spearhead Broadcasting, Inc.
3. As this shows, Mr. Chambers has missed numerous payments, including two within the past year -- in February and May of 2006. Mr. Chambers has a payment the other months, but he has not paid late charges nor additional interest on the payments missed, nor at this time has he wiped out his past-due balance. At this time he remains one month in arrears.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on February 5, 2007

Rochelle Smith Lacy
Rochelle Smith Lacy

Payments to Spearhead Broadcasting, Inc.

	DATE PAID	AMOUNT PAID	COMMENTS	BALANCE DUE
1	Yr. 2003		Interest only	
2	Dec. 27, 2003	\$1,083.33	for Dec.	
3	Yr. 2004			
4	January 17	\$1,083.33	for Jan '04	
5	Feb. 23	\$1,083.33	for Feb.	
6	March 01	\$0.00		\$1,083.33
7	April 05	\$1,083.33	for March	
8	April 22	\$1,083.33	for April	
9	May 25	\$1,083.33	for May	
10	June 23	\$1,083.33	for June	
11	July 01	\$0.00		
12	August 02	\$1,083.33	for July	
13	August 25	\$1,083.33	for August	
14	Sept. 30	\$1,083.33	for September	
15	October 26	\$2,270.96	Int. & principal-Oct.	
16	Nov.	\$0.00		
17	Dec. 02, 2004	\$2,270.96	for November	\$2,270.96
18				
19	Jan. 2005	\$2,270.96	for Dec. 2004	
20	February 01	\$0.00		\$4,541.92
21	March 22	\$2,270.96	for Jan 2005	
22	April 14	\$2,270.96	for Feb.	
23	May 01	\$0.00		\$6,812.88
24	June 10	\$2,270.96	for March	
25	June 10	\$2,270.96	for April	
26	June 20	\$2,270.96	for May	
27	July 28	\$2,270.96	for June	
28	August 01	\$0.00		\$4,541.92
29	Sept. 8	\$2,270.96	for July	
30	Oct. 18	\$2,270.96	for Aug.	
31	Nov. 16	\$2,270.96	for Sept.	
32	Dec.	\$0.00		\$6,812.88
33				
34	Jan. 2006	\$4,541.92	for Oct. & Nov. '05	\$2,270.96
35	Feb.	\$0.00		
36	March 01	\$2,270.96	for Dec. '05	
37	April 4	\$2,270.96	for Jan. '06	
38	April 28	\$2,270.96	for Feb.	
39	May 01	\$0.00		\$6,812.88
40	June 08	\$2,270.96	for March '06	
41	July 11	\$2,270.96	for April '06	
42	August 08	\$2,270.96	for May	
43	August 08	\$2,270.96	for June	
44	Sept. 8	\$2,270.96	for July	
45	Oct. 10	\$2,270.96	for Aug. '06	
46	Nov. 10	\$2,270.96	for Sept. '06	
47	Dec.	\$2,270.96	for Oct. '06	
48				
49	Jan. 18, 2007	\$4,541.92	for Nov. '06	\$4,541.92
50	Jan. 26	\$2,270.96	for Dec. '06	\$2,270.96
51	Feb.			
52	March 01			

Certificate of Service

I, William S. Carnell, hereby certify that the attached Further Comment was served on the following by U.S. Mail, postage prepaid, on this the sixth day of February, 2007:

Peter Gutmann, Esq.
Womble, Carlyle, Sandridge & Rice, PLLC
1401 I Street, NW
Seventh Floor
Washington, DC 20005

John Karousos, Assistant Chief
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street SW
Washington DC 20554



William S. Carnell